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EXAMINER				
O'CONNOR, BRIAN T				
ART UNIT		PAPER NUMBER		
2475				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

us-docketing@qualcomm.com

### Office Action Summary

**Application No.**

10/723,346

**Applicant(s)**

WALTON ET AL.

**Examiner**

Brian O'Connor

**Art Unit**

2475

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-8 and 10-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8 and 10-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. This office action is in response to applicant's amendment filed on 3/25/2010.
2. Claims 1, 3-8, and 10-38 are currently pending.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 36, 37, and 38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**With respect to claim 36**, the claim recites "a computer-readable medium" on line1 is not a non-transitory form of signal transmission indicating in the claim or specification or in the record. Therefore the claim 36 is considered to be a signal per se.

To overcome this rejection, it is suggested applicant change "computer readable-medium" to – non-transitory computer readable-medium ---.

**With respect to claim 38**, the claim recites "a computer-readable medium" on line1 is not a non-transitory form of signal transmission indicating in the claim or specification or in the record. Therefore the claim 38 is considered to be a signal per se.

To overcome this rejection, it is suggested applicant change "computer readable-medium" to – non-transitory computer readable-medium ---.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1, 3-8, and 10-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

**With respect to claims 1, 8, 22, 23, 25, 30, 31, 35, 36, and 38, each** independent claim recites a "expected average data requirements" as indicated in an admission profile. The specification describes expected a profile having an average rate, a maximum rate, burstiness, maximum latency, etc, however a written description for expected average data is missing from the detailed description thus leaving this term as new matter.

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 2, 4-6, 23, 25-32, and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al. (US 7,269,423; hereafter Lee).

**With respect to claim 1**, Lee discloses a scheduler (BTS-a of Figure 1) for a communication system (Abstract) which receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1; column 4, lines 27-38) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67; column 8, lines 14-23). Lee further discloses the capacity is modified to indicate flows that have been admitted (412 of Figure 5; column 6, lines 48-54; 514 of Figure 9; column 9, lines 10-18) wherein capacity is allocated for remote devices with capacity commitments in the admission profile before remote devices without capacity commitments in the admission profile (column 7, lines 44-67). Lee further discloses limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

**With respect to claim 4**, Lee further discloses a number of service levels (column 4, lines 50-54).

**With respect to claim 5**, Lee further discloses the remote devices will include a QoS indicator (Figure 8A, Figure 8B) and the allocated data rate will include the previous allocations from other remote devices (column 6, lines 42-57).

**With respect to claim 6**, Lee further discloses a number of QoS levels (column 5, lines 3-14).

**With respect to claim 23**, Lee discloses a method where a scheduler (BTS-a of Figure 1) for a communication system (Abstract) receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1; column 4, lines 27-38) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67; column 8, lines 14-23). Lee further discloses the capacity is modified to indicate flows that have been admitted (412 of Figure 5; column 6, lines 48-54; 514 of Figure 9; column 9, lines 10-18) wherein capacity is allocated for remote devices with capacity commitments in the admission profile before remote devices without capacity commitments in the admission profile (column 7, lines 44-67). Lee further discloses limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

**With respect to claim 25**, Lee discloses a method where a scheduler (BTS-a of Figure 1) for a communication system (Abstract) receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1; column 4, lines 27-38) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has

a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67; column 8, lines 14-23). The communication system operates on a time-division manner because the data services are related to packet data traffic, thus the scheduler is deciding data rates for a number of time periods. Lee further discloses the capacity is modified to indicate flows that have been admitted (412 of Figure 5; column 6, lines 48-54; 514 of Figure 9; column 9, lines 10-18) wherein capacity is allocated for remote devices with capacity commitments in the admission profile before remote devices without capacity commitments in the admission profile (column 7, lines 44-67). Lee further discloses limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

**With respect to claim 26**, Lee further discloses sending service and QoS indicators from remote devices (Figure 8A, Figure 8B).

**With respect to claim 27**, Lee further discloses sending service and QoS indicators from remote devices (Figure 8A, Figure 8B) and are required when the remote devices had data in their transmission queues.

**With respect to claim 28**, Lee further discloses a number of service levels (column 4, lines 50-54).

**With respect to claim 29**, Lee further discloses a number of QoS levels (column 5, lines 3-14) and must allocate data rates in accordance with the different QoS levels.

**With respect to claim 30**, Lee discloses a method where a scheduler (BTS-a of Figure 1) for a communication system (Abstract) receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1; column 4, lines 27-38) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67; column 8, lines 14-23). Lee further discloses sending grant messages (524 of Figure 9; column 9, lines 26-34). Lee further discloses the capacity is modified to indicate flows that have been admitted (412 of Figure 5; column 6, lines 48-54; 514 of Figure 9; column 9, lines 10-18). Lee further discloses limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

**With respect to claim 31**, The Examiner places notice that the limitation "means for receiving" and "means for granting" recited in claim 31 is being treated under 35 USC 112, sixth paragraph.

Lee discloses a scheduler (BTS-a of Figure 1), with a RF module (216 of Figure 4; viewed as equivalent to receiver in specification), for a communication system (Abstract) which receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1; column 4, lines 27-38; viewed as equivalent to processor in



specification) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67; column 8, lines 14-23). Lee further discloses the capacity is modified to indicate flows that have been admitted (412 of Figure 5; column 6, lines 48-54; 514 of Figure 9; column 9, lines 10-18) wherein capacity is allocated for remote devices with capacity commitments in the admission profile before remote devices without capacity commitments in the admission profile (column 7, lines 44-67). Lee further discloses limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

**With respect to claim 32**, Lee further discloses the profile contents a table with a group of rows (column 1, lines 45-55) to assign QoS values to remote devices (column 4, lines 27-38).

**With respect to claim 35**, The Examiner places notice that the limitation "means for receiving" and "means for granting" recited in claim 35 is being treated under 35 USC 112, sixth paragraph.

Lee discloses a scheduler (BTS-a of Figure 1; viewed as equivalent to the processor in specification), with a RF module (216 of Figure 4; viewed as equivalent to receiver in specification), for a communication system (Abstract) which receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1;

column 4, lines 27-38; viewed as equivalent to processor in specification) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67; column 8, lines 14-23). Lee further discloses the capacity is modified to indicate flows that have been admitted (412 of Figure 5; column 6, lines 48-54; 514 of Figure 9; column 9, lines 10-18) wherein capacity is allocated for remote devices with capacity commitments in the admission profile before remote devices without capacity commitments in the admission profile (column 7, lines 44-67). Lee further discloses limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Meggers et al. (US 6,728,270; hereafter Meggers).

**With respect to claim 7,** Lee fails to disclose a best-effort service levels.

Meggers discloses a system that uses best-effort queues (250, 260 of Figure 10; column 10, lines 20-25).

Meggers teaches the benefit of an improved QoS by using a best effort queue for non-QoS data and an EDF-queue for QoS data (210 of Figure 5). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the best effort queues of Meggers with the scheduler of Lee.

11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Dulin et al. (US 6,567,387; hereafter Dulin).

**With respect to claim 3,** Lee fails to disclose allocating data rate or capacity in order of increasing size of unallocated portion of a data transmission indicator.

Dulin discloses a communication system for scheduling data transmission that has a decision (1320 of Figure 13) allocates blocks in order of priority from the transmission request (column 13, lines 35-52; where the block weight is used to allocate the un-used blocks is a frame).

Dulin teaches the benefit of a more efficient and adaptive scheduling system by including current transmission conditions (column 2, lines 33-41). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the decision rule in Dulin's system with the system of Lee.

12. Claims 8, 9, 11, 13, 14, 15-17, 19, 20, 22, 24, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Haartsen (US 6,650,630).

**With respect to claim 8**, Lee discloses a base station (BTS-a of Figure 1) with a scheduler (214 of Figure 4) for a communication system (Abstract) which receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1; column 4, lines 27-38) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67; column 8, lines 14-23). Lee further discloses the capacity is modified to indicate flows that have been admitted (412 of Figure 5; column 6, lines 48-54; 514 of Figure 9; column 9, lines 10-18) wherein capacity is allocated for remote devices with capacity commitments in the admission profile before remote devices without capacity commitments in the admission profile (column 7, lines 44-67). Lee further discloses limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

Lee does not disclose admission including a plurality of time periods.

Haartsen discloses a time-domain division system that allocates bandwidth over a number of time slots (Figure 7b; Figure 8a; column 7, lines 34-46). Bandwidth allocation profiles are provided for individual mobile device users (column 11, lines 47-51).

Haartsen realizes the benefit of greater throughput for all the remote terminals by scheduling or packing the transmission requests (column 12, lines 12-17). Thus it

would have been obvious to a person having ordinary skill in the art at the time of the invention to use the method of Haartsen with the device and method of Lee.

**With respect to claim 11**, Lee further discloses a RF module (216 of Figure 4; viewed as equivalent to receiver in specification) to receive requests.

**With respect to claim 13**, Lee further discloses a RF module (216 of Figure 4; viewed as equivalent to receiver in specification) to transmit grants (524 of Figure 9; column 9, lines 26-34).

**With respect to claim 15**, Lee further discloses a number of service levels (column 4, lines 50-54).

**With respect to claim 16**, Lee further discloses the remote devices will include a QoS indicator (Figure 8A, Figure 8B) and the allocated data rate will include the previous allocations from other remote devices (column 6, lines 42-57).

**With respect to claim 17**, Lee further discloses a number of QoS levels (column 5, lines 3-14).

**With respect to claim 19**, Lee further discloses the remote devices will include a QoS indicator (Figure 8A, Figure 8B) and the allocated data rate will include the previous allocations from other remote devices (column 6, lines 42-57), then allocating a remaining data rate capacity (514 of Figure 9), and then allocating in response to a second service level (516, 520 of Figure 9).

**With respect to claim 20**, Lee further discloses a number of QoS levels (column 5, lines 3-14) and must allocate data rates in accordance with the different QoS levels.

**With respect to claim 22**, Lee discloses a scheduler (BTS-a of Figure 1) for a communication system (Abstract) which receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1; column 4, lines 27-38) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67; column 8, lines 14-23). Lee further discloses the capacity is modified to indicate flows that have been admitted (412 of Figure 5; column 6, lines 48-54; 514 of Figure 9; column 9, lines 10-18) wherein capacity is allocated for remote devices with capacity commitments in the admission profile before remote devices without capacity commitments in the admission profile (column 7, lines 44-67). Lee further discloses limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

Lee does not disclose admission including a plurality of time periods.

Haartsen discloses a time-domain division system that allocates bandwidth over a number of time slots (Figure 7b; Figure 8a; column 7, lines 34-46). Bandwidth allocation profiles are provided for individual mobile device users (column 11, lines 47-51).

Haartsen realizes the benefit of greater throughput for all the remote terminals by scheduling or packing the transmission requests (column 12, lines 12-17). Thus it

would have been obvious to a person having ordinary skill in the art at the time of the invention to use the method of Haartsen with the device and method of Lee.

Haartsen realizes the benefit of greater throughput for all the remote terminals by scheduling or packing the transmission requests (column 12, lines 12-17). Thus it would have been obvious to a person having ordinary skill in the art at the time of the invention to use the method of Haartsen with the device and method of Lee.

**With respect to claims 14 and 24**, Lee further discloses a BTS controller (211 of Figure 4) and that the data rate is determined by the current data rate in the system (column 9, lines 3-18; column 8, lines 56-64). Lee further discloses conditionally admitting the flow when the flow parameters, if combined with the admission profile, would not exceed the system capacity (516, 510 of Figure 9).

Lee does not disclose modifying an admission profile to incorporate a data flow.

Haartsen, in an invention for a wireless base station communicating with several remote terminals (Abstract), discloses an admission profile generated by the collection of transmission requests from the remote terminals (column 11, lines 46-51; where the profile is changed depending on the group of transmission requests).

Haartsen realizes the benefit of greater throughput for all the remote terminals by scheduling or packing the transmission requests (column 12, lines 12-17). Thus it would have been obvious to a person having ordinary skill in the art at the time of the invention to use the method of Haartsen with the device and method of Lee.

**With respect to claim 33**, Lee fails to disclose an admission profile created from a duty factor and frame phase associated with each remote device.

Haartsen discloses an admission profile generated by the collection of transmission requests from the remote terminals (column 11, lines 46-51). The admission profile contains a bandwidth ratios (column 11, lines 52-64; where the bandwidth ratios are viewed as equivalent to duty factors) and frequency assignments (column 11, lines 9-15).

Haartsen realizes the benefit of greater throughput for all the remote terminals by scheduling or packing the transmission requests (column 12, lines 12-17). Thus it would have been obvious to a person having ordinary skill in the art at the time of the invention to use the method of Haartsen with the device of Lee.

**With respect to claim 34**, The Examiner places notice that the limitation “means for receiving”, “means for admitting”, and “means for modifying” recited in claim 34 is being treated under 35 USC 112, sixth paragraph.

Lee further discloses a RF module (216 of Figure 4; viewed as equivalent to receiver in specification), and a profile server (40 of Figure 1; column 4, lines 27-38; viewed as equivalent to processor in specification for admitting and modifying) to determine the data rate for the remote device (520 of Figure 9).

Lee does not disclose modifying an admission profile to incorporate a data flow.

Haartsen, in an invention for a wireless base station communicating with several remote terminals (Abstract), discloses an admission profile generated by the collection of transmission requests from the remote terminals (column 11, lines 46-51; where the profile is changed depending on the group of transmission requests).



Haartsen realizes the benefit of greater throughput for all the remote terminals by scheduling or packing the transmission requests (column 12, lines 12-17). Thus it would have been obvious to a person having ordinary skill in the art at the time of the invention to use the method of Haartsen with the device and method of Lee.

13. Claims 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view Haartsen and further in view of Meggers.

**With respect to claims 12 and 18**, Lee fails to disclose a best-effort service levels.

Meggers discloses a system that uses best-effort queues (250, 260 of Figure 10; column 10, lines 20-25).

Meggers teaches the benefit of an improved QoS by using a best effort queue for non-QoS data and an EDF-queue for QoS data (210 of Figure 5). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the best effort queues of Meggers with the scheduler of Lee.

14. Claims 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Haartsen and further in view of Dulin.

**With respect to claims 10 and 21**, Lee fails to disclose allocating data rate or capacity in order of increasing size of unallocated portion of a data transmission indicator.

Dulin discloses a communication system for scheduling data transmission that has a decision (1320 of Figure 13) allocates blocks in order of priority from the transmission request (column 13, lines 35-52; where the block weight is used to allocate the un-used blocks is a frame).

Dulin teaches the benefit of a more efficient and adaptive scheduling system by including current transmission conditions (column 2, lines 33-41). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the decision rule in Dulin's system with the system of Lee.

15. Claims 36 and 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Kumar et al. (US 7,085,279 hereafter Kumar).

**With respect to claim 36**, Lee discloses a method where a scheduler (BTS-a of Figure 1) for a communication system (Abstract) receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1; column 4, lines 27-38) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67; column 8, lines 14-23). Lee further discloses sending grant messages (524 of Figure 9; column 9, lines 26-34) wherein capacity is allocated for remote devices with capacity commitments in the admission profile before remote devices without capacity commitments in the admission profile (column 7, lines 44-67). Lee further discloses

limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

However, Lee does not disclose a computer readable media.

Kumar, in the same field of endeavor, discloses a computer readable medium storing a program to perform a connection setup over a packet network in conjunction with a switching network. The computer-readable medium is an electronic, magnetic, optical, or other physical device or means that can be contain or store a computer program for use by or in connection with a computer-related system or method (column 7, lines 51-67). One skilled in the art would have clearly recognized that the method of Lee would have been implemented in a software module. The implemented software would perform the function with less expense and more flexibility. Therefore, it would have been obvious to have use the technique in Lee as-is and implement it as taught by Kumar in order to reduce cost and improve the adaptability and flexibility of the networking system.

**With respect to claim 38**, Lee discloses a scheduler (BTS-a of Figure 1; viewed as equivalent to the processor in specification), with a RF module (216 of Figure 4;), for a communication system (Abstract) which receives requests from remote devices (ms1 of Figure 1) and refers to a profile (40 of Figure 1; column 4, lines 27-38) to determine the data rate for the remote device (520 of Figure 9). The scheduler also has a first logic (504 of Figure 9) to decide if the remote device has a requested capacity commitment from the profile and a second logic (506, 512 of Figure 9) to provide data rate or capacity for the remote device (508, 514 of Figure 9; column 7, lines 44-67;

column 8, lines 14-23). Lee further discloses the capacity is modified to indicate flows that have been admitted (412 of Figure 5; column 6, lines 48-54; 514 of Figure 9; column 9, lines 10-18) wherein capacity is allocated for remote devices with capacity commitments in the admission profile before remote devices without capacity commitments in the admission profile (column 7, lines 44-67). Lee further discloses limiting capacity commitments before remaining capacity is allocated to any unsatisfied data transmission indicators (column 9, lines 3-18; column 8, lines 56-64).

However, Lee does not disclose a computer readable media.

Kumar, in the same field of endeavor, discloses a computer readable medium storing a program to perform a connection setup over a packet network in conjunction with a switching network. The computer-readable medium is an electronic, magnetic, optical, or other physical device or means that can be contain or store a computer program for use by or in connection with a computer-related system or method (column 7, lines 51-67). One skilled in the art would have clearly recognized that the method of Lee would have been implemented in a software module. The implemented software would perform the function with less expense and more flexibility. Therefore, it would have been obvious to have use the technique in Lee as-is and implement it as taught by Kumar in order to reduce cost and improve the adaptability and flexibility of the networking system.

16. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Kumar and further in view of Haartsen.

**With respect to claim 37**, Lee further discloses a BTS controller (211 of Figure 4) and that the data rate is determined by the current data rate in the system (column 9, lines 3-18; column 8, lines 56-64).

Lee does not disclose modifying an admission profile to incorporate a data flow.

Haartsen, in an invention for a wireless base station communicating with several remote terminals (Abstract), discloses an admission profile generated by the collection of transmission requests from the remote terminals (column 11, lines 46-51; where the profile is changed depending on the group of transmission requests).

Haartsen realizes the benefit of greater throughput for all the remote terminals by scheduling or packing the transmission requests (column 12, lines 12-17). Thus it would have been obvious to a person having ordinary skill in the art at the time of the invention to use the method of Haartsen with the device and method of Lee.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian O'Connor whose telephone number is (571)270-1081. The examiner can normally be reached on M-F, 9AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dang Ton can be reached on 571-272-3171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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